Varnish Cloud Subscription and Services Agreement

Version 2.2, June 18, 2021

Varnish Cloud Subscription and Services Agreement
PLEASE READ THIS MASTER SUBSCRIPTION AGREEMENT BEFORE PURCHASING OR USING THE PRODUCTS OR SERVICES.

BY USING OR PURCHASING THE PRODUCTS OR SUPPORT SERVICES, THE CUSTOMER SIGNIFIES ITS ASSENT TO THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF THE CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT PURCHASE OR USE THE PRODUCTS OR SUPPORT SERVICES.

THIS AGREEMENT, INCLUDING THE ATTACHED VARNISH SERVICES TERMS AND CONDITIONS, IS THE COMPLETE AND ENTIRE UNDERSTANDING OF THE PARTIES REGARDING THE SUBJECT MATTER HEREOF AND SUPERSEDES ALL PRIOR WRITTEN OR ORAL AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS WITH RESPECT THERETO.

THE SOFTWARE IS PROVIDED BY VARNISH AND CONTRIBUTORS ON AN "AS-IS-BASIS" AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. IN NO EVENT SHALL VARNISH OR CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

This Varnish Enterprise Cloud Subscription and Services Agreement ("Agreement") is effective as of the date of Customer's Order Form ("Effective Date") and is by and between Varnish Software, Inc., for itself and its affiliates, including its parent company, Varnish Software AB, a Swedish company (together "Varnish"), and the customer identified on the applicable Order Form, which may be placed online ("Customer").
This Agreement includes the Exhibits attached hereto. In addition to terms defined elsewhere in this Agreement, capitalized terms shall have the meanings set forth in the "Definitions" section set forth below. In consideration of the promises and the mutual obligations of the parties set

forth herein, and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.0 Software Services.
Varnish offers the Varnish Enterprise Cloud Software, Varnish Controller Cloud Software, Varnish Custom Statistics, and the other features identified in Exhibit A (the "Software") on a subscription basis.

2.0 License Grant.
During the Term, the Customer hereby subscribes to the Services and hereby grants to the Customer a non-exclusive, non-transferable, non-assignable license to access and use the Software (upon due payment of Fees) solely for the Customer's internal use and in accordance with the additional license terms set forth in Exhibit A.

3.0 Reservation of Rights.
Varnish reserves all rights not expressly granted in this Section 3 and Exhibit A. Customers may not, except as permitted in this Section 3 and Exhibit A, copy, modify, adapt, or create derivative works of the Software or Documentation located at https://docs.varnish-software.com/or remove any copyright or other proprietary rights notices thereon. All rights granted herein are a license, not a sale. Other than the rights licensed to Customer hereunder, Customer has no other implied license or right of any kind regarding the foregoing. Customer shall not itself, and shall not permit its Users or any other party to, directly or indirectly, in whole or in part, sublicense, distribute, lease, disassemble, decompile, decrypt, or reverse engineer, or otherwise attempt to discover or replicate source code for the Software; or alter, modify, or prepare derivative works based on the Software or Services. Customer acknowledges and agrees that Varnish owns and retains all rights existing from time to time in any jurisdiction under copyright law, patent law, moral rights law, trade secret law, confidential information law, trademark law, unfair competition law, or other similar rights ("Proprietary Rights") in the Software, Services, and Documentation, any training materials and any copies, modifications, adaptations, derivative works, and enhancements thereof, by whoever produced.

4.0 Fees and Payment. The Customer agrees to pay the Fees as stated on the applicable Cloud Provider webpage. The Customer will pay directly any taxes arising out of this Agreement or Varnish's performance under this Agreement, but excluding taxes on Varnish's net income. If any applicable law requires Customer to withhold amounts from any payments to Varnish under this Agreement, (a) Customer shall effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish Varnish with tax receipts evidencing the payments of such amounts and (b) the sum payable by Customer upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, Varnish receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Varnish would have received and retained absent the required deduction or withholding. If Customer fails to pay Fees in accordance with this Section, Varnish may (i) suspend fulfilling its obligations under this Agreement until such payment is received, or (ii) may Terminate this Agreement.

5.0 Warranty and Support.

a)Varnish represents and warrants that: (a) Varnish is financially solvent and has the ability to perform its obligations hereunder; (b) the person signing below is a duly authorized officer or representative of Varnish with the authority to enter into and bind Varnish to the terms and conditions in this Agreement; (c) the Services will be performed in a competent manner by qualified personnel and all Software and services will be provided on a timely basis; (d) any Services provided do not infringe the intellectual property rights of third parties; and (e) Varnish owns, licenses and/or has the right to grant and extend the subscription provided hereunder. However, Varnish does not warrant that the Software and Services are or will be error-free. Software warranties are regulated in Exhibit A (Warranty).

b) Customer must notify Varnish of any deficiencies in Service without undue delay within fifteen (15) days of when the defective Service performance was discovered or should have been discovered if the claim is not to lapse.

c) Varnish will seek to correct any warranty failure or errors in the Software that materially affect Customer operations within thirty (30) days of Customer reporting such failure or errors to Varnish. If Varnish is unable to provide a solution to the failure after notice from the Customer, Varnish will refund to Customer all amounts paid by Customer for the failed Services or defective Software, in the period elapsed from the complaint till termination.

d) Procedure for Warranty Claims. Customer agrees to report all defects it encounters with the Software by email. In order to receive support, the Customer needs to register at the Varnish-Software webpage.

6.0 Term.
This Agreement shall be effective as of the Effective Date and shall remain in effect for the period as ordered by the Customer (the "Initial Term") unless terminated by either party as described herein.

7.0 Termination.
Either party may terminate this Agreement (i) if the other party commits a material breach of this Agreement that remains uncured thirty (30) days after written notice of such breach is delivered to the other party, (ii) immediately upon breach of confidentiality obligations in this Agreement that remain uncured thirty (30) days after written notice of such breach, or
(iii) immediately if the other party assigns any of its assets to its creditors, or voluntarily or involuntarily petitions for the protection of bankruptcy court. Additionally, Varnish may terminate or discontinue any or all of the Varnish services on thirty (30) days' written notice delivered to the Customer. Rights of termination are in addition to any other remedies available to the parties, at law or in equity. Upon any termination or expiration of this Agreement: (a) All license rights shall immediately terminate and Customer and Customer's Users shall immediately cease use of the Software and Services; (b) Any amounts then owed hereunder shall be immediately due and payable by Customer; and, (c) The following sections of this Agreement shall survive termination: 2, 3, 8, 9 and 11. (d) Upon Customer's failure to pay any amounts owed under this Agreement when due, Customer hereby agrees that, in addition to any other remedies available at law or equity, Varnish may immediately suspend Customer's and Users' access to the Software and Services, except when Customer's failure to pay is due to a good faith dispute regarding such amounts owed, and Customer notifies Varnish of such dispute prior to the date such amounts are due. The customer acknowledges and agrees that Varnish will have no liability for any loss of the use of data resulting from its exercising the rights set forth in this

paragraph and that Varnish may exercise the rights set forth in this paragraph prior to the expiration of the thirty (30) day cure period set forth above.

8.0 Confidentiality.
- Definitions. "Proprietary Information" is, collectively and without regard to form any third-party information which either party has agreed to treat as confidential, and Confidential Information and Trade Secrets. "Confidential Information" means nonpublic information of value to its owner (other than Trade Secrets) and that is the subject of its owner's reasonable efforts to maintain confidentiality thereof. "Trade Secrets" means information that derives actual or potential economic value because it is not generally known to and by proper means not readily ascertainable by, others who can obtain economic value from its disclosure or use; and is the subject of commercially reasonable efforts to maintain its secrecy. Without limitation of the foregoing, Varnish's Proprietary Information includes the Software and all source code associated therewith and the Documentation.
- The scope of Obligations. Each party shall protect the other party's Proprietary Information with the same standard of protection and care that it uses for its own Proprietary Information but in no event less than reasonable care and diligence. Neither party shall disclose, publish, transmit, or make available all or any part of such Proprietary Information except in confidence or a need-to-know basis to its own employees and third-party contractors who have undertaken a written obligation of protection and confidentiality at least as protective as those, and shall not duplicate, transform, or reproduce such Proprietary Information except as expressly permitted hereunder.
- Exclusions. Any information will not be considered "Proprietary Information" to the extent, but only to the extent, that such information: (a) is already known to the receiving party free of any confidentiality obligation at the time it is obtained; (b) is or becomes publicly known through no wrongful act of the receiving party; (c) is rightfully received from a third party without restriction and without breach of this Agreement, or (d) is required to be disclosed by law or court order. In the event that either party is required by law or court order or regulatory authority to disclose any Proprietary Information, such disclosure may be made only after the other party has been notified and has had a reasonable opportunity to seek a court order or appropriate agreement protecting disclosure of such Proprietary Information. • Trade Secrets. With regard to Trade Secrets, the obligations in this Section shall continue for so long as such information continues to be a Trade Secret. With regard to Confidential Information, the obligations in this Section shall continue for the term of this Agreement and for four (4) years thereafter.

9.0 Limitation of Liability.
NEITHER VARNISH NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, LICENSORS, RESELLERS, OR REPRESENTATIVES (COLLECTIVELY "VARNISH PARTIES") SHALL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, TIME, SAVINGS, DATA, OR GOODWILL, DAMAGES ARISING FROM USE OF OR INABILITY TO USE THE PRODUCTS OR SERVICES, OR COST OF REPLACEMENT GOODS OR SERVICES, WHETHER FORESEEABLE OR

UNFORESEEABLE, THAT MAY ARISE OUT OF OR IN CONNECTION WITH THE PRODUCTS, SERVICES OR OTHERWISE RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, EVEN IF IT HAS OR THEY HAVE BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. EXCEPT FOR ANY DIRECT DAMAGES FOR BODILY INJURIES OR TANGIBLE PROPERTY DAMAGE PROXIMATELY CAUSED BY VARNISH, THE MAXIMUM AGGREGATE LIABILITY OF THE VARNISH PARTIES IN ALL EVENTS SHALL BE LIMITED TO THE FEES PAID BY THE CUSTOMER TO VARNISH UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE FIRST CLAIM

10.0 General.
a) Relationship of Parties. The relationship of the parties is that of independent contractors, and this Agreement shall not be construed to create any employment relationship, partnership, joint venture, or agency relationship or to authorize any party to enter into any commitment or agreement binding on the other party.
b) Publicity.
Customer hereby grants to Varnish a royalty-free, limited, non-transferable (except in connection with an assignment of this Agreement), non-exclusive license during the term of this Agreement to use and display Customer's name and publicly available branding in customer lists, advertising materials, trade show materials and other literature identifying Varnish's customers; provided that Varnish agrees to comply with Customer's then-current guidelines, as provided to Varnish, governing use of such Customer's name and branding.
c) Equitable Remedies.
Customer agrees that any threatened or actual breach of Varnish's Proprietary Rights by Customer shall constitute immediate, irreparable harm to Varnish for which monetary damages are an inadequate remedy and for which equitable remedies may be awarded by a court of competent jurisdiction without requiring Varnish to post any bond or any other security (or if a court shall require a bond, then a bond in no amount above U.S. $1,000). Nothing contained herein shall limit Varnish's right to any remedies at law, including the recovery of damages for breach of this Agreement.
d) Assignment.
This Agreement and all rights and obligations may not, in any event, be assigned in whole or in part by either party without the prior written consent of the other, except the rights and obligations of Varnish may be assigned without consent to another entity in connection with a reorganization, merger, consolidation, acquisition, or other restructuring involving all or substantially all of the voting securities and/or assets of Varnish. Any attempted assignment in contravention hereof shall be void and of no effect.
e) Binding Effect.
This Agreement shall be binding upon, and inure to the benefit of the parties, their legal representatives, successors, and assigns as permitted by this Agreement.
f) Force Majeure.
Except for any payment obligations hereunder, neither party shall be liable for failure to perform any of its respective obligations hereunder if such failure is caused by an event outside its reasonable control, including but not limited to, an act of God, war, or natural disaster.

g) No Waiver.

No delay or failure in exercising any right hereunder and no partial or single exercise thereof shall be deemed to constitute a waiver of such right or any other rights hereunder. No consent to a breach of any express or implied term of this Agreement shall constitute consent to any prior or subsequent breach.

h) Amendments.

No modifications, waivers, additions, or amendments to this Agreement shall be effective unless made in writing as an addendum to this Agreement and signed by handwritten signature by duly authorized representatives of the parties.

i) Severability.

If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

j) Construction.

Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that this Agreement shall be more strictly construed against one party than the other.

k) Order of Precedence.

In the event of any conflict or inconsistency between or among the Order Form, this Agreement, and the Exhibits hereto, the following order of precedence shall apply to resolve such conflict or inconsistency: the Order Form, then this Agreement, and then the Exhibits.

I) Notices. This Agreement may change from time to time and will be notified on the Cloud Provider webpage.

m) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its rules regarding conflict of laws. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The seat of arbitration shall be New York, USA. The language to be used in the arbitral proceedings shall be English.

Definitions. In addition to other terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

n) "Documentation" means the hosted end-user instructions for the use and operation of the Varnish Services.

0) "Fees" means the fees set forth on the Cloud Provider Webpage.

p) "Users" means (i) any employee of Customer, or (ii) any other person authorized by Customer in writing and made subject to the confidentiality and license provisions set forth in this, who have been supplied separate user identifications and passwords by Varnish. Each User must have his or her own login credentials to access the Varnish Services.

Exhibit A

1.0 Varnish Cloud License
The following Varnish Software Cloud License ("VSCL") shall apply to the Varnish Cloud Software, which includes:
- Varnish Enterprise ™ - This is our enhanced, tested, and supported version of Varnish Cache.
- Varnish Controller ™ - This is an administration console for Varnish Enterprise.
- Varnish High Availability (VHA)™ - A high performance cache replicator. VHA will increase the hit rate across your architecture while reducing backend traffic.
- Massive Storage Engine (MSE)™ - Disk based storage with optional persistence. MSE is capable of scaling to tens and hundreds of terabytes of storage per instance.
- Varnish Hitch - End to end HTTPS support.
- Total Encryption ™ - Securely encrypt your entire cache using dual key AES 256 encryption.
- Dynamic Backends - Connect to any backend on the fly, including DNS based backends
- Content Prefetching - Preload your cache ahead of time.
- Request Mirroring - Send a read-only copy of your traffic to a 3rd party service.
- Parallel ESI - Execute ESI includes in parallel, greatly increasing your existing ESI performance.
- Edgestash - Modern JSON based templating inside of Varnish. Use Edgestash to accelerate browser based Javascript rendering technologies like Angular, React, Backbone, and Ember.
- JSON - VCL based support for reading and parsing JSON from request and response bodies. Also supports reading JSON from disk and 3rd party services.
- Varnish Broadcaster ™ - Distributed cache invalidation.
- Varnish Discovery ™ - Autoscale Varnish in the cloud or a modern container service.
- CDN Connectors - Synchronize Varnish with Akamai's CDN.
- VMODs - Varnish ships with both our exclusive VMODs and a selection of popular community VMODs. Documentation for the above (collectively the "Software").

1.1 Consecutive license grant (subscription)
1.1.1 Duration
The Software is licensed on a consecutive basis (subscription). As a paying subscriber, the Customer is entitled to a license to the Software as stated herein and as renewed in accordance with the Agreement Section 6 ("Term").

1.1.2 Scope
Subject to the terms of this VSCL, the Agreement, and payment of the correct subscription fees, Varnish hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, and limited license to install, use, and study the Software for use within its organization on the number of Servers (virtual or physical) for the duration and as further stated in the Order Form.

1.2 License restrictions Customer may not (and may not allow any third party):
- decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from any encrypted or encoded portion of the Software, in whole or in part;

- sell, sublicense, rent, lease, distribute, market, or commercialize for any purpose,(i) the Software, (ii) any modified version or derivative version of the Software, or (iii) any Varnish software, whether modified or not, licensed under an open-source license;
- create, develop, license, install, use, or deploy any third-party software or services to circumvent, enable, modify or provide access, permissions, or rights that violate any technical restrictions in the Software;
- remove any product identification, proprietary, copyright, or other notices contained in the Software;
- modify or create a derivative work of any portion of the Software;
- publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software.

1.3 INTELLECTUAL PROPERTY RIGHTS
Varnish and its suppliers own all right, titles, and interests in copyrights or other intellectual property rights relating to the Software to the Customer. Varnish and its suppliers retain all rights to the Software that are not expressly granted to the Customer through this VSCL. Varnish may terminate the VSCL if the Customer fails to comply with the terms of this VSCL, hereunder fails to pay the stipulated fees. In the event of such termination, the Customer shall immediately stop using the Software and Support, return any received media and documentation, and destroy or permanently delete any installed versions of the Software (including documentation), and confirm such destruction or deletion in writing within 7 days.

1.4 WARRANTY
Varnish warrants that the Software will operate in all material respects as described in the applicable software documentation, as described on https://docs.varnish-software.com/ with sub-pages. Except as provided in the paragraph above and to the maximum extent permitted by law, Varnish disclaims any warranty for the Software. The Software and any related documentation are provided on an "as-is" basis without warranty of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. Hereunder the parties acknowledge that Varnish does not warrant the absence of any errors in the Software and that any such errors do not constitute a contractual defect.

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